In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1365

JOHN LOOKRETIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on February 5, 1970. A petition for rehearing was denied on February 26, 1970. The petition for a writ of certiorari was filed on March 27, 1970. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals correctly rejected petitioner's contentions relating to the constitutionality of 18 U.S.C. 1952, the validity of the indictment, the sufficiency of the evidence, and the adequacy of the instructions.

2. Whether the trial court abused its discretion in the manner in which it conducted the *voir dire* examination.

STATEMENT

After a jury trial in the United States District Court for the Northern District of Indiana, petitioner was convicted for the second time [1] on three counts charging violations of 18 U.S.C. 1952, which proscribes the use of an interstate facility in aid of an unlawful gambling activity. Petitioner was sen-

[1] The first trial on these charges resulted in a conviction by the trial court sitting without a jury and affirmance by the court of appeals. *United States* v. *Lookretis*, 385 F. 2d 487. On a petition for certiorari, this Court (390 U.S. 338) vacated the judgment and remanded to the court of appeals for further consideration in the light of *Chapman* v. *California*, 386 U.S. 18, and *Marchetti* v. *United States*, 390 U.S. 39. After such consideration, the court of appeals remanded for a new trial on the ground that part of the facts stipulated at trial (that petitioner had made an application for a federal wagering tax stamp) resulted in prejudicial error under *Marchetti*. *United States* v. *Lookretis*, 398 F. 2d 64. No reference to the wagering tax stamp was made at the second trial.

tenced to five years' imprisonment on each count, but the sentence was reduced to six months' imprisonment on each count, to run concurrently, with the balance suspended, and five years' probation. He was also fined a total of $3,000 (A. 7).[2] The court of appeals affirmed.

The government's evidence, which is recounted in some detail in the opinion below (Pet. App. A, 3-6), was limited at this trial to the allegations contained in a bill of particulars (A. 18-20). It showed that the petitioner paid the rent for premises occupied by a recreation club in East Chicago, Indiana, in which he maintained a ticker tape machine which received baseball information through interstate lines (A. 31-32, 56-57). This information was posted on a blackboard at the premises. Petitioner or an employee sold "baseball tickets" with numbers representing professional baseball teams; winners were determined by statistics posted on the board relating to the particular team chosen (see A. 37-40). Three FBI agents testified that they had purchased baseball tickets at the club on the dates charged in the indictment (A. 34-35, 37-38, 39). Numerous individuals were observed purchasing baseball tickets (A. 34). On one occasion an agent purchased tickets directly from petitioner, who then supplied the agent with paper and pencil to copy team names and numbers from the board (A. 34-35). The ticker tape machine was operating and individuals were seen apparently

[2] "A." refers to petitioner's appendix in the court of appeals, a copy of which is on file with the Clerk of this Court.

recording information from the machine on a large blackboard (A. 34, 37, 39). One non-agent witness testified that on one occasion he had won money on a baseball ticket purchased at the club (A. 38). A ticker tape machine and a blackboard seized when the club was raided were introduced into evidence (A. 35; Pet. App. A, 5-7).

The defense presented no evidence (A. 41).

ARGUMENT

Petitioner's contentions challenging the constitutional validity of 18 U.S.C. 1952,[3] the sufficiency of the indictment and the evidence, and purported errors in the instructions are adequately answered in the opinion of the court below, upon which we here rely (see Pet. App. A, 3-9), and present no issues warranting further review. Accordingly, we limit our discussion to the allegation of prejudice resulting from the *voir dire* examination.

After reading the indictment to the prospective jurors, the trial court proceeded to conduct the *voir dire* (A. 42-48, 50-53). The potential jurors were asked whether they were patrons of horse-betting places or they had participated in baseball pools (A.

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[3] We note that in addition to the cases cited by the court below sustaining the validity of the statute (see Pet. App. A, 8), challenges based on First Amendment grounds have also consistently been rejected by the courts of appeals. See *Truchinski* v. *United States*, 393 F. 2d 627 (C.A. 8), certiorari denied, 393 U.S. 831; *Martin* v. *United States*, 389 F. 2d 895 (C.A. 5), certiorari denied, 391 U.S. 919; cf. *Angelini* v. *Illinois Bell Telephone Co.*, 418 F. 2d 111 (C.A. 7), pending on petition for a writ of certiorari, No. 1265, this Term.

47-48). While the court stated explicitly that petitioner was not charged with running a horse book (A. 51), a purpose of the *voir dire* was to winnow out as jurors those persons who had "any objection or prejudice" against enforcement of the federal law under which petitioner was indicted (A. 46-47). Petitioner raised no objection to any of the specific questions asked by the court, or to the general manner which the court conducted the *voir dire* (see Pet. App. A, 7-8).

The claim is now made that reference to horse bookmaking on the *voir dire* prejudiced petitioner since it might have led the jury to convict him of a charge not contained in the indictment. This argument wholly overlooks, however, that the trial court made it amply clear to the panel that petitioner was not charged with horse-betting (A. 51), and that the government's evidence, as stated in the indictment and as elaborated in the bill of particulars, concerned not horse-bookmaking, but the operation of a baseball pool, conduct unlawful under Indiana law. Moreover, any chance of confusion engendered by the *voir dire* was dispelled by the court's instructions. The jurors were told that if they believed that petitioner was guilty of some crime other than that charged in the indictment they could not consider it, and that they were to consider only the offenses charged in this indictment (A. 81). In view of these circumstances, there was no error in the manner in which the *voir dire* was conducted.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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